

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

Commodity Futures Trading Commission,  
*et. al.*,

*Plaintiffs,*

vs.

TMTE, INC. a/k/a metals.com, Chase Metals Inc., Chase Metals, LLC, Barrick Capital, Inc., Lucas Thomas Erb a/k/a Lucas Asher a/k/a Luke Asher, and Simon Batashvili,

*Defendants.*

Civil Action No. 3:20-CV-2910-L

**NOTICE OF PROPOSED SUBSTITUTE COUNSEL SUBJECT TO  
EMERGENCY MOTION TO MODIFY PRELIMINARY INJUNCTION**

Defendants Lucas Asher and Simon Batashvili (“Individual Defendants”) respectfully submit this Notice of Proposed Substitute Counsel Subject to Emergency Motion to Modify Preliminary Injunction (the “Notice”), and would inform the Court as follows:

On July 1, 2021, the Court issued an order allowing current counsel for Individual Defendants—Arnold A. Spencer—to withdraw from this case subject to two conditions (the “Withdrawal Order”). The first of these conditions requires that Individual Defendants inform the Court whether they will obtain substitute counsel or proceed *pro se*. And if substitute counsel is obtained, such counsel must enter an appearance in the case by July 30, 2021 at 5:00 p.m.

Substitute counsel, Gene R. Besen at Bradley Arant Boult Cummings LLP (“Substitute Counsel”), previously entered a limited appearance on March 30, 2021 “to represent[] [Individual Defendants] with regard to challenging the freezing of their assets for the purposes of retaining

counsel.” (Dkt. 231). Pursuant to this limited appearance, Substitute Counsel filed an Emergency Motion to Modify Preliminary Injunction (the “Emergency Motion to Modify”) (Dkt. 232). The Emergency Motion to Modify seeks to modify the Consent Order of Preliminary Injunction and Other Equitable Relief Against Defendants Lucas Thomas Erb a/k/a Lucas Asher a/k/a Luke Asher and Simon Batashvili (the “Preliminary Injunction”) (Dkt. 165) currently in place in this case and allow Individual Defendants the use of untainted and future earned assets to pay for attorneys’ fees.

Per the Withdrawal Order’s terms, Individual Defendants submit this Notice to inform the Court:

1. Individual Defendants intend to obtain substitute counsel for this case;
2. Individual Defendants intend for Gene R. Besen of Bradley Arant Boult Cummings LLP to serve as substitute counsel in this case; and
3. Substitute Counsel stands ready to file a non-qualified entry of appearance on behalf of Individual Defendants *subject to an order by the Court on the Emergency Motion to Modify that allows Individual Defendants to use untainted and future earned assets to pay for attorneys’ fees*. Absent such an order on the Emergency Motion to Modify, Substitute Counsel cannot and will not enter an appearance (beyond the limited appearance entered on March 30, 2021) on behalf of Individual Defendants.

At this juncture of the case, Individual Defendants have effectively been unrepresented since January 2021. There is an ongoing parallel criminal investigation that threatens the liberty of these Individual Defendants. Untainted assets may exist and the Individual Defendants should

have the ability to earn additional monies wholly unrelated to Receivership Entities, or any commodities business, that could be utilized to pay for their defense in this matter and the parallel criminal investigation. That is the limited relief sought by the Emergency Motion to Modify that is fully briefed and pending before the Court.

Therefore, for the reasons set forth in their Emergency Motion to Modify and pursuant to this Notice, the Individual Defendants request that the Court (1) modify the Preliminary Injunction and allow Individual Defendants the use of untainted assets to pay for attorneys' fees and, subject to such order, (2) permit Substitute Counsel to make an entry of appearance in this case on behalf of Individual Defendants.

Dated: July 23, 2021

Respectfully submitted,

By: /s/ Gene R. Besen

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**SUBSTITUTE COUNSEL FOR DEFENDANTS  
LUCAS ASHER AND SIMON BATASHVILI**

**CERTIFICATE OF SERVICE**

I certify that all counsel of record who have consented to electronic service were served with a true and correct copy of the foregoing document via the Court's CM/ECF system on this 23rd day of July 2021.

/s/ Gene R. Besen  
Gene R. Besen